IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.657 OF 2006

M/s.B.H. International & Ors. Petitioners

Vs.

The Chairperson, Debt Recovery
Appellate Tribunal, Mumbai & Ors..Resopondents

Mr. V.R. Dhond with Mr. Mukesh Jain, for the Petitioners
Mr. G.N. Pandit, for Respondent NO.2.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA JJ.
DATE : 17th April,2006

P.C.:

. Rule. Heard forthwith.

2. Petitioners herein were defendant Nos. 2, 3 and 4 in O.A. taken out by Respondent NO.2. From the order of D.R.T. it appears that Petitioner No.3 was served and in fact engaged an Advocate. Petitioner Nos. 1 and 2 were served at the address which is also the address now shown in the petition. The learned D.R.T. held that it was proper service. As the petitioners herein thereafter did not proceed in the matter a decree came to be passed against them as also against M/s.Vishwas Steel Ltd., the Respondent NO.3 herein. It appears that the Respondent No.3 is before B.I.F.R. After the order of recovery was served on the petitioners they moved D.R.T. for setting aside the order which came to be dismissed pursuant to which an Appeal came to be preferred. The learned Appellate Tribunal by the impugned order of 23rd August, 2005 was pleased to hold that the petitioners herein had been unable to

show sufficient cause for non-appearance and consequently dismissed the Appeal. It is this order which is the subject matter of the present petition.

3. Learned Counsel for the petitioners has taken us to various documents including the judgment in proceedings initiated under Section 138 of the Negotiable Instruments Act wherein some findings have been given in their favour. Our attention is also invited to the correspondence exchanged between the petitioners and the Respondent NO.3 which indicates that the petitioners were not prima facie owing moneys to the Respondent No.3. We do not propose to go into the controversy. The only question is whether the impugned order is liable to be set aside.

4. In the instant case as soon as the notice of recovery was served on the petitioners, the petitioners took steps to apply for setting aside the order. They thereafter preferred an Appeal and are also pursuing the matter before this Court. In these circumstances in our opinion an opportunity can be given to the petitioners by putting them to certain terms to show their bonafides. In the light of that the following order:-

(i) The impugned order dated 28th May, 2004 of D.R.T. and 9th August, 2005 of D.R.A.T. are set aside and consequently the order dated 24th April,

2004 is set aside on the petitioners depositing before the D.R.T. within four weeks from today a sum of Rs.15.00 lakhs. The sum when deposited to be invested by the D.R.T. in any nationalised bank initially for a period of one year and thereafter for successive period till final disposal of the proceedings. Considering the controversy the D.R.T. is directed to dispose of the main Application at the earliest, but not later than six months from today. Rule made absolute accordingly. No order as to costs.

(ii) It is made clear that if the amount is not deposited the present Petition shall stand dismissed.

(F.I.REBELLO, J.)

(ANOOP V. MOHTA, J.)